



## 1997 SENATE BILL 437

February 4, 1998 - Introduced by Senators DECKER, PLACHE and CHVALA, cosponsored by Representative BALDWIN. Referred to Committee on Labor, Transportation and Financial Institutions.

1     **AN ACT to amend** 20.143 (3) (j), 778.25 (1) (b), 778.25 (2) (intro.), 778.25 (2) (b)  
2             and 778.25 (3); and **to create** 101.576, 778.25 (1) (a) 7. and 778.25 (1) (c) of the  
3             statutes; **relating to:** creating a hazardous painting certificate program,  
4             granting rule-making authority, making an appropriation and providing a  
5             penalty.

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### *Analysis by the Legislative Reference Bureau*

This bill creates a hazardous painting certificate program administered by the department of commerce (department). Under this bill, the department is required to promulgate rules that establish standards for hazardous painting (applying paint that contains hazardous substances) and for basic and supplemental hazardous painting certificate programs. The hazardous painting certificate programs must include instruction about and written and practical testing in hazardous painting. A person may apply for a certificate by completing a form provided by the department and including proof that he or she has completed a hazardous painting certificate program not more than 30 days before the department receives the application. An application for renewal must be accompanied by proof that the applicant has completed a supplemental hazardous painting certificate program not more than 30 days before the department receives the application. A certificate and a renewal of a certificate are valid for 3 years.

The bill provides that no person may employ or contract with a professional painter (a painting contractor, an employe of a painting contractor or a person who

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engages in hazardous painting while repairing the body of a motor vehicle for compensation) unless the professional painter holds a valid hazardous painting certificate and that no professional painter may receive compensation for hazardous painting unless he or she holds a valid certificate and provides proof that he or she has completed the basic hazardous painting certificate program. In addition, no professional painter may provide a falsified hazardous painting certificate to an employer or make a false statement to an employer regarding that painter's certification. The department is required to inspect work sites to ensure compliance with the rules governing hazardous painting and the provisions of this bill. A person who violates the rules or the bill's provisions is subject to a forfeiture of not more than \$200 for an initial violation and not more than \$1,000 for a subsequent violation. The bill also allows the department to issue citations to recover forfeitures under the bill. The issuance of citations to recover forfeitures is similar to the issuance of traffic citations or tickets for traffic violations.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

1           **SECTION 1.** 20.143 (3) (j) of the statutes, as affected by 1997 Wisconsin Act 27,  
2 is amended to read:

3           20.143 (3) (j) *Safety and building operations.* The amounts in the schedule for  
4 the purposes of subchs. I, II, III, IV and VI of ch. 101, chs. 145 and 168 and ss. 236.12  
5 (2) (a), 236.13 (1) (d) and (2m) and 236.335. All moneys received under ch. 145 and  
6 ss. 101.177 (4) (a) 4., 101.178, 101.19, 101.576 (3) (b), 101.63 (9), 101.654 (3), 101.73  
7 (12), 101.82 (4), 101.973 (7) and 236.12 (7) shall be credited to this appropriation.

8           **SECTION 2.** 101.576 of the statutes is created to read:

9           **101.576 Hazardous painting certificate program. (1) DEFINITIONS.** In this  
10 section:

11           (a) "Hazardous painting" means the application of a substance containing or  
12 combined with a hazardous substance in vaporized, liquid or particulate form to  
13 create a coating that will adhere to a surface to protect or preserve the surface, except

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1 that "hazardous painting" does not include the application of water-based paint that  
2 does not contain emulsion epoxies or isocyanates.

3 (b) 1. Except as provided in subd. 2., "hazardous substance" means a chemical  
4 listed under 29 CFR 1910, subpart Z; a chemical listed in the latest edition of  
5 Threshold Limits Values for Chemical Substances and Physical Agents in the Work  
6 Environment, published by the American Conference of Governmental Industrial  
7 Hygienists; or a chemical whose hazards must be communicated to employers and  
8 employes under 29 CFR 1910.1200.

9 2. "Hazardous substance" does not include a substance that does not pose any  
10 acute or chronic health hazard upon exposure because of its physical state, volume  
11 or concentration or a consumer product packaged for distribution to and use by the  
12 general public.

13 (c) "Professional painter" means a painting contractor, an employe of a painting  
14 contractor or a person who engages in hazardous painting while repairing the body  
15 of a motor vehicle, as defined in s. 340.01 (35), for compensation. "Professional  
16 painter" does not include an artist.

17 (2) REQUIREMENTS OF HAZARDOUS PAINTING PROGRAMS. The department shall  
18 promulgate rules that establish standards for hazardous painting and for basic and  
19 supplemental hazardous painting programs. The rules shall require all of the  
20 following:

21 (a) That a basic hazardous painting certificate program include instruction and  
22 written and practical testing in methods of ventilation, respirator selection, chemical  
23 reaction to body tissue, proper use of painting tools and knowledge of relevant health  
24 and safety laws and rules, as determined by the department.

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1           (b) That a supplemental hazardous painting certificate program include  
2 instruction and written and practical testing necessary to ensure that a person who  
3 completes the program is knowledgeable about developments and changes related  
4 to hazardous painting that have occurred since the person completed a basic  
5 hazardous painting certificate program.

6           **(3) CERTIFICATE.** (a) A professional painter may not receive compensation for  
7 hazardous painting unless he or she holds a valid, hazardous painting certificate  
8 issued by the department. A person may apply for a hazardous painting certificate  
9 on a form prescribed by the department. An applicant for an initial issuance of a  
10 certificate shall include proof that he or she completed a basic hazardous painting  
11 certificate program not more than 30 days before the department receives the  
12 application. An applicant for renewal of a certificate shall include proof that he or  
13 she completed an approved supplemental hazardous painting certificate program  
14 not more than 30 days before the department receives the application.

15           (b) The department may prescribe by rule a reasonable fee to defray the  
16 department's costs under this section. A certificate and a renewal of a certificate are  
17 valid for 3 years.

18           **(4) PROHIBITIONS.** A person may not employ or contract with a professional  
19 painter to perform hazardous painting unless the professional painter holds a valid  
20 hazardous painting certificate. A professional painter may not provide a falsified  
21 hazardous painting certificate or make a false statement regarding the professional  
22 painter's certification to an employer or to a person who contracts with the  
23 professional painter.

24           **(5) DEFENSES.** It is a defense to a violation of sub. (4) by an employer or a person  
25 who contracts with a professional painter if the employer or that person produces a

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1 copy of the professional painter's certificate and the employer or that person  
2 reasonably believed that the certificate was not falsified.

3 (6) ENFORCEMENT; PENALTIES. (a) The department shall inspect work sites to  
4 ensure compliance with this section and the rules promulgated under sub. (2). The  
5 department may recover a forfeiture for a violation of this section or the rules  
6 promulgated under sub. (2) by use of the citation procedure under s. 778.25.

7 (b) A person who violates this section or the rules promulgated under sub. (2)  
8 may be required to forfeit not more than \$200 for a first violation and not more than  
9 \$1,000 for each subsequent violation.

10 **SECTION 3.** 778.25 (1) (a) 7. of the statutes is created to read:

11 778.25 (1) (a) 7. Under s. 101.576 (6) (b).

12 **SECTION 4.** 778.25 (1) (b) of the statutes is amended to read:

13 778.25 (1) (b) The citation form provided by this section may serve as the initial  
14 pleading for the action and, except as provided in par. (c), is adequate process to give  
15 a court jurisdiction over the person if the citation is filed with the court.

16 **SECTION 5.** 778.25 (1) (c) of the statutes is created to read:

17 778.25 (1) (c) If served as provided under s. 801.11, the citation form issued  
18 under par. (a) 7. is adequate process to give a court jurisdiction over the person.

19 **SECTION 6.** 778.25 (2) (intro.) of the statutes is amended to read:

20 778.25 (2) (intro.) A citation under this section shall be signed by the issuing  
21 agent or officer or by an officer who has authority to make arrests for the violation  
22 and shall contain substantially the following information:

23 **SECTION 7.** 778.25 (2) (b) of the statutes is amended to read:

24 778.25 (2) (b) The name and department of the issuing agent or officer.

